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by adding the following to the printed bill to be designated as Sections 2-8 and by redesignating Section 2 of the printed bill as Section 9:

As used in this act, unless the context otherwise requires:

(1) "Department" means the department of environment and conservation;

(2) "Due Diligence" means a regulated entity's systematic efforts, appropriate to the size and nature of its business, to prevent, detect and correct violations through all of the following:

(A) Compliance policies, standards and procedures that identify how employees and agents are to meet the requirements of laws, regulations, permits and other sources of authority for environmental requirements;

(B) Assignment of overall responsibility for overseeing compliance with policies, standards, and procedures, and assignment of specific responsibility for assuring compliance at each facility or operation;

(C) Mechanisms for systematically assuring that compliance policies, standards and procedures are being carried out, including monitoring and auditing systems reasonably designed to detect and correct violations, periodic evaluation of the overall performance of the compliance management system, and a means for employees or agents to report violations of environmental requirements without fear of retaliation;

(D) Efforts to communicate effectively the regulated entity's standards and procedures to all employees and other agents;

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(E) Appropriate incentives to managers and employees to perform in accordance with the compliance policies, standards and procedures, including consistent enforcement through appropriate disciplinary mechanisms; and

(F) Procedures for the prompt and appropriate correction of any violations, and any necessary modifications to the regulated entity's program to prevent future violations;

(3) "Environmental Audit" means a systematic, documented, periodic and objective review by regulated entities of facility operations and practices related to meeting environmental requirements;

(4) "Environmental audit report" means the analysis, conclusions, and recommendations resulting from an environmental audit, but does not include data obtained in, or testimonial evidence concerning, the environmental audit;

(5) "Gravity-based penalties" are that portion of a penalty over and above the economic benefit, i.e., the punitive portion of the penalty, rather than that portion representing a defendant's economic gain from noncompliance;

(6) "Regulated entity" means any entity, including a federal, state or municipal agency or facility, regulated under state or federal environmental laws.

SECTION 3. Incentives for Self-Policing.

(a) Where the regulated entity establishes that it satisfies all of the conditions of Section 4 of this act, the department will not seek gravity-based penalties for violations of environmental requirements.

(b) The department will reduce gravity-based penalties for violations of environmental requirements by seventy-five percent (75%) so long as the regulated entity satisfies all of the conditions of Section 4(b) through 4(i) of this act.

(c)

(1) The department will not recommend to the Office of the Attorney General or other prosecuting authority that criminal charges be brought against a regulated entity where the department determines that all of the conditions in Section 4 are satisfied, so long as the violation does not demonstrate or involve:

(A) a prevalent management philosophy or practice that conceals or condons environmental violations; or

(B) high-level corporate officials' or managers' conscious involvement in, or willful blindness to, the violations.

(2) Whether or not the department refers the regulated entity for criminal prosecution under this section, such department reserves the right to recommend prosecution for the criminal acts of individual managers or employees under existing policies guiding the exercise of enforcement discretion.

(d)) The department will not request or use an environmental audit report to initiate a civil or criminal investigation of the entity. For example, the department will not request an environmental audit report in routine inspections. If the department has independent reason to believe that a violation has occurred, however, the department

may seek any information relevant to identifying violations or determining liability or extent of harm.

SECTION 4. Conditions.

(a) Systematic Discovery: The violation was discovered through:

(1) an environmental audit; or

(2) an objective, documented, systematic procedure or practice reflecting the regulated entity's due diligence in preventing, detecting, and correcting violations. The regulated entity must provide accurate and complete documentation to the department as to how it exercises due diligence to prevent, detect and correct violations according to the criteria for due diligence outlined in Section 2. The department may require as a condition of penalty mitigation that a description of the regulated entity's due diligence efforts be made publicly available.

(b) Voluntary Discovery: The violation was identified voluntarily, and not through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement. For example, the policy does not apply to:

(1) emissions violations detected through a continuous emissions monitor (or alternative monitor established in a permit) where any such monitoring is required;

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(2) violations of National Pollutant Discharge Elimination System (NPDES) discharge limits detected through required sampling or monitoring; or

(3) violations discovered through a compliance audit required to be performed by the terms of a consent order or settlement agreement.

(c) Prompt Disclosure: The regulated entity fully discloses a specific violation within ten (10) days (or such shorter period provided by law) after it has discovered that the violation has occurred, or may have occurred, in writing to the department.

(d) Discovery and Disclosure Independent of Government or Third Party Plaintiff: The violation must also be identified and disclosed by the regulated entity prior to:

(1) the commencement of a federal, state or local agency or department inspection or investigation, or the issuance by such agency or department of an information request to the regulated entity;

(2) notice of a citizen suit;

(3) the filing of a complaint by a third party;

(4) the reporting of the violation to the department (or other government agency) by a “whistleblower” employee, rather than by one authorized to speak on behalf of the regulated entity; or

(5) imminent discovery of the violation by a regulatory agency;

(e) Correction and Remediation: The regulated entity corrects the violation within sixty (60) days, certifies in writing that violations have been corrected, and takes appropriate measures as determined by the department to remedy any environmental or

human harm due to the violation. If more than sixty (60) days will be needed to correct the violation(s), the regulated entity must so notify the department in writing before the sixty-day period has passed. Where appropriate, the department may require that to satisfy subsections (e) and (f), a regulated entity enter into a publicly available written agreement, administrative consent order or judicial consent decree, particularly where compliance or remedial measures are complex or a lengthy schedule for attaining and maintaining compliance or remediating harm is required.

(f) Prevent Recurrence: The regulated entity agrees in writing to take steps to prevent a recurrence of the violation, which may include improvements to its environmental auditing or due diligence efforts.

(g) No Repeat Violations: The specific violation (or closely related violation) has not occurred previously within the past three (3) years at the same facility, or is not part of a pattern of federal, state or local violations by the facility's parent organization (if any), which have occurred within the past five (5) years. For the purposes of this section, a violation is:

(1) any violation of federal, state or local environmental law identified in a judicial or administrative order, consent agreement or order, complaint, or notice of violation, conviction or plea agreement; or

(2) any act or omission for which the regulated entity has previously received penalty mitigation from the department or any other regulatory agency.

(h) Other Violations Excluded: The violation is not one which (1) resulted in serious actual harm, or may have presented an imminent and substantial endangerment to, human health or the environment, or (2) violates the specific terms of any judicial or administrative order, or consent agreement.

(i) Cooperation: The regulated entity cooperates as requested by the department and provides such information as is necessary and requested by the department to determine applicability of this policy. Cooperation includes, at a minimum, providing all requested documents and access to employees and assistance in investigating the violation, any noncompliance problems related to the disclosure, and any environmental consequences related to the violations.

SECTION 5. Economic Benefit.

The department will retain its full discretion to recover any economic benefit gained as a result of noncompliance to preserve a “level playing field” in which violators do not gain a competitive advantage over regulated entities that do comply. The department may forgive the entire penalty for violations which meet conditions of subsections (a) through (e) in Section 4 and, in the department’s opinion, do not merit any penalty due to the insignificant amount of any economic benefit.

SECTION 6. Effect on State Law, Regulation or Policy.

The department will work closely with counties and business entities to encourage the adoption of policies that reflect the incentives and conditions outlined in this policy. The department remains firmly opposed to statutory environmental audit privileges that shield

evidence of environmental violations and undermine the public's right to know, as well as to blanket immunities for violations that reflect criminal conduct, present serious threats or actual harm to health and the environment, allow noncomplying companies to gain an economic advantage over their competitors, or reflect a repeated failure to comply with state or federal law. The department will work with counties and municipalities to address any provisions of state audit privilege or immunity laws that are inconsistent with this policy, and which may prevent a timely and appropriate response to significant environmental violations. The department reserves its right to take necessary actions to protect public health or the environment by enforcing against any violations of state or federal law.

SECTION 7. Applicability.

(a) This policy applies to the assessment of penalties for any violations under all of the environmental statutes promulgated or administered by the state of Tennessee.

(b) To the extent that existing department enforcement policies are not inconsistent, such will continue to apply in conjunction with this policy. However, a regulated entity that has received penalty mitigation for satisfying specific conditions under the provisions of this act may not receive additional penalty mitigation for satisfying the same or similar conditions under other policies for the same violation, nor will this policy apply to violations which have received penalty mitigation under other policies.

(c) This act sets forth factors for consideration that will guide the department in the exercise of its prosecutorial discretion. It states the department's views as to the

proper allocation of its enforcement resources. The policy is not intended as guidance and, as such, does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties.

(d) This policy shall be used whenever applicable in settlement negotiations for both administrative and civil judicial enforcement actions. It is not intended for use in pleading, at hearing or at trial. The policy may be applied at the department's discretion to the settlement of administrative and judicial enforcement actions instituted prior to, but not yet resolved, as of the effective date of this act.

SECTION 8. Public Accountability.

(a) Within three (3) years of the effective date of this policy, the department shall complete a study of the effectiveness of the policy in encouraging:

(1) changes in compliance behavior within the regulated community, including improved compliance rates;

(2) prompt disclosure and correction of violations, including timely and accurate compliance with reporting requirements;

(3) corporate compliance programs that are successful in preventing violations, improving environmental performance, and promoting public disclosure; and

(4) consistency among state programs that provide incentives for voluntary compliance.

Such study shall be made available to the public.

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(b) The department will make publicly available the terms and conditions of any compliance agreement reached under this act, including the nature of the violation, the remedy, and the schedule for returning to compliance.